JAMES E. STRONG

IBLA 80-26 Decided February 13, 1980

Appeal from decision of the Alaska State Office, Bureau of Land Management, declaring the Billy-Jim No. 1 lode mining claim (AA 24743) abandoned and void.

Set aside and remanded.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claim and Abandonment -- Mining Claims: Recordation -- Mining Claims: Abandonment -- Words and Phrases

   "Copy of the Official Record of the Notice on Certificate of Location." Under the revised definition of the term at 43 CFR 3833.0-5(i) (1979), a duplicate of a notice of location which has been filed with the local recorder is a "copy of the official record of the notice or certificate of location," even though it is not stamped by the local recorder and does not include a reference to the local record, and is therefore acceptable under 43 CFR 3833.1-2(b) if tendered within 90 days of the date of location. \

2. Mining Claims: Recordation -- Regulations: Generally -- Regulations: Interpretation

   Where it benefits the affected party to do so, and where there are no intervening rights which will be adversely affected, a mining claim recordation regulation which is amended while the matter is pending may be applied in its amended form.

APPEARANCES: James E. Strong, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On February 21, 1979, James E. Strong filed a copy of a notice of location of the Billy-Jim No. 1 lode mining claim with the Anchorage, Alaska, State Office, of the Bureau of Land Management (BLM). This notice of location indicates that the claim was located on October 1, 1978.

On September 7, 1979, BLM issued a decision returning this notice to the claimant, stating that it was not filed within 90 days of the date of location of the claim, citing 43 CFR 3833.1-2(a). Although it did not so state, BLM's decision effectively declared the claim abandoned and void, as, under 43 CFR 3833.4, this is the consequence of failure to file a copy of the notice of location within 90 days. Strong filed an appeal from this decision.

[1] In his statement of reasons, appellant explains that he tendered a copy of his notice of location to BLM in November 1978, within the 90 day period required by the regulations, but that BLM refused it because the location notice did not bear the stamp of the local recorder's office. Appellant noted that he had filed for record this notice with the local recorder's office on October 30, 1978, but could not obtain the return of the recorded instrument then, as it took time to have it recorded and microfilmed.

Under the regulations in effect in November 1978, when appellant attempted to file the unstamped copy of his notice, BLM properly refused to accept it, as claimants were required to include a reference to the local public record of the notice of location with the copy thereof filed with BLM. 43 CFR 3833.1-2(c)(2) (1978). However, effective March 16, 1979, the recordation requirements were amended and this requirement was removed. Moreover, the definition of the "copy of the official record of the notice of certificate of location" in 43 CFR 3833.0-5(i) was changed to the following:

> Copy of the official record of the notice of certificate of location" means a legible reproduction or duplicate, except microfilm, of the original instrument of recordation of an unpatented mining claim, mill or tunnel site which was or will be filed in the local jurisdiction where the claim or site is located or other evidence, acceptable to the proper BLM office, of such instrument of recordation. It also includes an exact reproduction, duplicate or other acceptable evidence, except microfilm, of an amended instrument which may change or alter the description of the claim or site.

Under this new definition, the copy of the notice of the location which appellant tendered to BLM in November 1978 was satisfactory, as it was a copy of what he had filed with the local recorder on

October 24, 1978. However, BLM, in conformity with the regulations then in effect, did not accept this copy as it did not bear the local recorder's stamp with the appropriate recording data. This was apparently because the local recorder had not finished processing the instrument and had not yet returned appellant's copy to him.

[2] In the absence of countervailing public policy reasons or intervening rights, it may be appropriate to apply the amended version of a regulation to a pending matter where it benefits the affected party to do so. See B. B. Wadleigh, 44 IBLA 11, 15 (1979); Wilfred Plomis, 34 IBLA 222, 228 (1978); Henry Offe, 64 I.D. 52, 55-6 (1957). Such is the case here. Appellant lives in a remote section of Alaska, some 23 miles from the nearest road. Thus, it was very difficult for him to attend personally to the progress of his recordation through the local system, and he could not return to the State Office later owing to winter conditions. He was unable to return to Anchorage until February 1979, 6 weeks after the expiration of 90 days. Had BLM been able to apply the new rule in November 1978, he would have been spared the trouble of this effort. The matter was pending in March 1979, as BLM took no action to reject his notice until after the adoption of the new rule. There is no showing of any conflicting interest. Therefore, we see no reason why appellant should not now be regarded as having complied with the recordation requirement when he tendered a copy of his notice in November 1978, subject to any intervening rights of record. McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the matter remanded for further action consistent herewith.

Edward W. Stuebing
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Joan B. Thompson
Administrative Judge